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5 Attorneys for Secured Lienholder,
6 EIM-EI Segundo,
A California limited partnership

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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

10
11 In re

Case No. 10-41570

12 Azid Amiri,

Chapter 13

13
14 Debtor.

AMENDED MOTION FOR
DETERMINATION THAT THE
AUTOMATIC STAY IS INAPPLICABLE,
OR ALTERNATIVELY FOR RELIEF
FROM THE AUTOMATIC STAY, AND
FOR SANCTIONS

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16
17 DATE: June 16, 2010

18 TIME: 10:30 a.m.

CTR: 220

19 RS No: EKY-1

20 The Honorable Randall J. Newsome

21 Pursuant to Bankruptcy Code Sections 362(a) and 362(d), EIM-EI Segundo, a
22 California partnership and secured lienholder ("EIM"), hereby moves: (1) for a
23 determination that the automatic stay of Bankruptcy Code Section 362(a) is inapplicable
24 with regard to EIM's enforcement of, and protection of its interests in: (a) that certain
25 Installment Note ("Note") dated July 14, 2004, in the initial principal amount of \$345,000,
26 made and executed by Kang Property, Inc. ("Note"); and (b) that Short Form Deed of
27 Trust ("Deed of Trust") executed by Kang Property, Inc., dated July 14, 2004, and
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1 recorded as Document No. 2004-027758 on July 20, 2004, against that certain real
2 Property and gas station improvements thereon located at 7920 Brentwood Blvd,
3 Brentwood, CA ("Property"), including, without limitation, that the automatic stay is
4 inapplicable to prevent EIM from proceeding with, and completing, its foreclosure sale of
5 the Property.

6 Alternatively, EIM moves this Court for relief from the automatic stay of
7 Bankruptcy Code Section 362(a) with regard to EIM's enforcement of, and protection of
8 its interests in, (a) the Note; and (b) the Deed of Trust, including, granting EIM relief
9 from the automatic stay to immediately allow EIM to proceed with, and completing, its
10 foreclosure sale of the Property. By this Motion, the Lender also seeks, an order that
11 instructs the Lender to promptly continue its non-judicial foreclosure without being
12 required to wait the 14 day period in Bankruptcy Rule 4001(a)(3) for the Order to
13 become final since each day that goes by brings the accrual of interest and penalties on
14 senior debt and the real property taxes on the Property to EIM's detriment.

15 The basis for this motion for determination that the automatic stay does not apply
16 to prevent EIM from enforcing its rights under the Note and Deed of Trust, including
17 foreclosure on the Property, is because the Chapter 13 Debtor, Azid Amiri ("Debtor"),
18 does not own the Property that he asserts he owns, which is instead owned by a non-
19 debtor corporation, Kang Property, Inc. and an individual Abolghassam H. Shahidi
20 ("Shahidi"). The Debtor is not the borrower of EIM. The obligation being enforced is not
21 an obligation of the Debtor and the Property is not property of the Debtor or the Debtor's
22 bankruptcy estate.

23 The basis of this motion for relief from the automatic stay includes: (i) "for cause",
24 including, without limitation, the bad faith filing of this Chapter 13 Case by Azid Amiri
25 ("Debtor"), the inaccurate and misleading Schedules and Statement of Affairs filed by
26 Azid Amiri ("Debtor") in this case, the ineligibility of the Debtor to be a Chapter 13 debtor,
27 the inability of the Debtor to confirm a Chapter 13 plan which restructures the debts of
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1 the non-debtor corporation Kang, Inc., and the lack of adequate protection of Lender's
2 interest in the Property due to accruing senior liens. EIM requests and moves that the
3 Court sequester EIM's cash collateral, the issues and profits from the Property to protect
4 EIM's interests.

5 This Motion is based upon this Motion, the Notice and Opportunity For Hearing
6 On Motion For Determination That The Automatic Stay Is Inapplicable, And For
7 Sanctions, the Notice Of Hearing On Alternative Motion For Relief From The Automatic
8 Stay, And For Sanctions, the Memorandum Of Points And Authorities In Support Of
9 Motion For Determination That The Automatic Stay Is Inapplicable, Or Alternatively For
10 Relief From The Automatic Stay, And For Sanctions, the Declaration Of Emma Gardner
11 In Support Of Motion For Determination That The Automatic Stay Is Inapplicable, Or
12 Alternatively For Relief From The Automatic Stay, And For Sanctions, the oral
13 arguments of counsel, and such other and further evidence and arguments as may be
14 presented at any hearing on these motions.

15 PLEASE TAKE NOTICE THAT SHOULD THE DEBTORS FAIL TO APPEAR AT
16 THE HEARING ON THE ABOVE MOTION FOR RELIEF FROM THE AUTOMATIC
17 STAY AND CONTEST OR OBJECT TO THE MOTION, THE COURT MAY GRANT
18 LENDER IMMEDIATE RELIEF FROM STAY AT THE HEARING AND LENDER WOULD
19 THEN HAVE THE RIGHT TO PROCEED WITH ITS NON-JUDICIAL FORECLOSURE
20 SALE OF THE PROPERTY UNDER THE POWER OF SALE PROVISION IN THE
21 DEED OF TRUST.

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23 DATED: May 22, 2010.

LAW OFFICES OF EUGENE K. YAMAMOTO

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25 By: /s/ Eugene K. Yamamoto
26 Eugene K. Yamamoto,
27 Attorney for Secured Lienholder, EIM-EI
28 Segundo, Inc.